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10/023,456	10/30/2001	Jose Costa Requena	944-001.038-1	2266

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Ware, Fressola, Van Der Sluys & Adolphson, LLP  
Building Five, Bradford Green  
755 Main Street  
P.O. Box 224  
Monroe, CT 06468

EXAMINER
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SIDDIQI, MOHAMMAD A

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/023,456

Filing Date: October 30, 2001

Appellant(s): REQUENA, JOSE COSTA

JOSE COSTA REQUENA  
For Appellant

**EXAMINER'S ANSWER**

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This is in response to the appeal brief filed 01/30/2008 appealing from the Office action mailed 07/17/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

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The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

20020065894	DALAL	5-2002
6,807,423	ARMSTRONG	10-2004

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 17- 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalal et al. (US 2002/0065894) (hereinafter Dalal) in view of Armstrong et al (6,807,423) (hereinafter Armstrong).

3. As per claim 17, Dalal discloses, System, comprising:

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a central server (10, fig 1, page 2, paragraph #0015), responsive to an invitation message from an inviting user (13, fig 1) to exchange content with an invited user (12, fig 1, page 2, paragraphs #0014-#0015), for providing a presence query (15, fig 1, page 2, paragraph #0016); and

a presence server (15, fig 1), responsive to said presence query (15, fig 1, page 2, paragraph #0016), for providing presence information relating to a registered user (instant messenger client 12, messaging processor 15, fig 1, page 2, paragraphs #0014-#0016),

wherein said central server is responsive (10, fig 1, page 2, paragraph #0015) to said presence information relating to said invited user registered at said presence server (instant messenger client 12, presence and messaging processor 15, fig 1, page 2, paragraphs #0014-#0016), wherein said presence query and invitation message are communicated according to an application layer control protocol (20, fig 1, Page 2, paragraph #0015).

However Dalal did not explicitly disclose in detail for use in deciding whether said content is sent to said invited user, stored or refused, and wherein said presence information relating to said registered user pertains to a spatial location of said registered user. Armstrong discloses for use in deciding whether said content is sent to said invited user (determines best mode of communication, fig 7, col 6, lines 48-61; col 7, lines 20-26; col 13, lines 44-67), stored (e-mail, fig 7, col 6, lines 48-61; col 7, lines 20-26; col 13, lines

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44-67; col 14, lines 4-13) or refused (e.g. E-mail filter, fig 7, col 7, lines 20-26; col 14, lines 4-13) wherein said presence information relating to said registered user pertains to a spatial location of said registered user (col 4, lines 11-20; col 11, lines 56-58; col 14, lines 31-35). It would have been obvious to one of ordinary skill in the art to incorporate personal communication portal (rule based, 14, 15, 56, fig 7) based on rule based profile management taught by Armstrong into an presence and messaging processor (15, fig 1) as taught by Dalal in order to monitor a presence on a multiple access network and reporting the presence status to a central location.

4. As per claim 18, the claim is rejected for the same reasons as claim 17, above. In addition, Dalal Discloses central server is also responsive to said invitation message for providing a subscription query and wherein said system further comprises a messaging server (instant messaging server, page 2, paragraph #0014), responsive to said subscription query, for providing notification information relating to a request from a subscribed user for notification of an event (user can be notified, page 1, paragraph #0009), and wherein said central server is responsive to said notification information for said subscribed user in deciding said content should be sent to said invited user, stored or refused (user preference, subscriber is a user

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who subscribes Instant messaging, page 2, paragraph #0017).

5. As per claim 19, the claim is rejected for the same reasons as claim 17, above. In addition, Dalal disclose application layer control protocol is a session initiation protocol (20, fig 1, the Session Initiation Protocol (SIP) is an Internet Engineering Task Force standard protocol for initiating an interactive user session that involves multimedia content such as video, voice, chat, gaming, and virtual reality, like HTTP or SMTP, SIP works in the Application layer of the Open Systems Interconnection communications model, the Application layer is the level responsible for ensuring that communication is possible. SIP can establish multimedia sessions or Internet telephony calls, and modify, or terminate them, the protocol can also invite participants to instant messaging sessions that do not necessarily involve the initiator, because the SIP supports name mapping and redirection services, it makes it possible for users to initiate and receive communications and services from any location, and for networks to identify the users where ever they are.)

6. As per claim 20, the claim is rejected for the same reasons as claim 17, above, in addition, Armstrong discloses presence information pertaining to said spatial location of said user is communicated as a spatial location

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payload (col 1, lines 45-63, col 4, lines 11-20; col 11, lines 56-58; col 14, lines 31-35).

7. As per claim 21, the claim is rejected for the same reasons as claim 17, above. In addition, Armstrong discloses presence information pertaining to said spatial location of said user is communicated as a spatial location payload (col 1, lines 45-63, col 4, lines 11-20; col 11, lines 56-58; col 14, lines 31-35).

#### **(10) Response to Argument**

Appellant primarily argued on page 4 of the brief that Dalal and Armstrong, which, when considered alone or in combination, fails to disclose "a central server responsive to presence information relating to an invited user registered at a presence server for use in deciding whether content is sent to the invited user, stored or refused". The examiner respectfully disagrees.

As noted in the Final Office Action Examiner relies on Armstrong only to teach deciding (personal communication portal, a rule based system maintains and provides presence information based on the subscribers preference, 10, fig 3, col 6, line 48-51; col 13, lines 44-50) whether said content is sent to said invited user (PCP may connect the watching/inviting



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party to watched/invited party, 13, fig 3, col 6, lines 48-61), stored (buffers messages, col 7, lines 14-17) or refused (PCP may inform the watching/inviting party that the watched/invited party is unavailable, 13, fig 3, col 6, lines 48-61; further teaches in col 7, lines 4-16), and wherein said presence information relating to said registered user (col 6, lines 8-11) pertains to a spatial location (physical/geographical location, col 3, lines 47-48; col 11, lines 55-58) of said registered user (col 6, lines 8-11; col 11, lines 50-67).

Dalal discloses a central server (10, fig 1, page 2, paragraph #0015), responsive to an invitation message from an inviting user (user invites another user in an instant message session, 13, fig 1) to exchange content with an invited user (12, fig 1, page 2, paragraphs #0014-#0015), for providing a presence query (15, fig 1, page 2, paragraph #0016); and a presence server (15, fig 1), responsive to said presence query (15, fig 1, page 2, paragraph #0016), for providing presence information relating to a registered user (instant messenger client 12, messaging processor 15, fig 1, page 2, paragraphs #0014-#0016), wherein said central server is responsive (10, fig 1, page 2, paragraph #0015) to said presence information relating to said invited user registered at said presence server (instant messenger client 12, presence and messaging processor 15, fig 1, page 2, paragraphs #0014-#0016), wherein said presence query and

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invitation message are communicated according to an application layer control protocol (20, fig 1, Page 2, paragraph #0015). However, Dalal did not explicitly disclose in detail for deciding whether said content is sent to said invited user, stored or refused, and wherein said presence information relating to said registered user pertains to a spatial location of said registered user. Armstrong discloses deciding (personal communication portal, a rule based system maintains and provides presence information based on the subscribers preference, 10, fig 3, col 6, line 48-51; col 13, lines 44-50) whether said content is sent to said invited user (PCP may connect the watching/inviting party to watched/invited party, 13, fig 3, col 6, lines 48-61), stored (buffers messages, col 7, lines 14-17) or refused (PCP may inform the watching/inviting party that the watched/invited party is unavailable, 13, fig 3, col 6, lines 48-61; further teaches in col 7, lines 4-16), and wherein said presence information relating to said registered user (col 6, lines 8-11) pertains to a spatial location (physical/geographical location, col 3, lines 47-48; col 11, lines 55-58) of said registered user (col 6, lines 8-11; col 11, lines 50-67). It would have been obvious to one of ordinary skill in the art to incorporate personal communication portal (rule based, 14, 15, 56, fig 7) based on rule based profile management taught by Armstrong into an presence and messaging processor (15, fig 1) as taught

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by Dalal in order to monitor a presence on a multiple access network and reporting the presence status to a central location.

Thus, examiner asserts that the combination of Dalal and Armstrong , which, when considered alone or in combination, discloses "a central server responsive to presence information relating to an invited user registered at a presence server for use in deciding whether content is sent to the invited user, stored or refused".

In response to Appellant's argument on page 7 of the brief that "subject matter relied upon by the Office is not supported by the provisional application in a manner that complies with the written description requirement or the enablement requirement of 112, first paragraph", the arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant. See MPEP § 2145.

For the above reasons, it is believed that the rejections should be sustained.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

/Mohammad A Siddiqi/

04/25/2008

Examiner, Art Unit 2154

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2154

Conferees:

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2154

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2151